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that he may let his invention lie idle if he so desires, yet the real spirit which animates the patent statutes is that the public should be benefited by the use of the invention.<sup>4</sup> The Circuit Court of Appeals has recently held, however, that the owner of a patent may have an injunction against the infringement of it, although there has been deliberate non-user of the patent-right. *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 150 Fed. Rep. 741 (First Circ.).

In England such a case is expressly covered by the statute, which provides for compulsory licenses in the case of non-user of the privilege.<sup>5</sup> In this country, in the absence of express statutory provision, the courts, at least those of equity, should contrive so far as possible to attain the same desirable result. There have been no decisions directly in point, though the language in many cases intimates broadly that the owner has an absolute right to deal with his patent as he sees fit.<sup>6</sup> However, these were mostly cases where the legal right was in question, and the courts were not considering whether equity in its discretion might not decline to aid in evading the true spirit of the patent law. There are many instances where equity refuses its extraordinary remedy, even though the right at law may be perfectly clear and the damages inadequate.<sup>7</sup> And equity interferes in favor of the patentee, not so much to prevent multiplicity of suits at law or because damages there may be inadequate, as to protect to the fullest extent the right which the state has given in return for the benefit conferred. It would seem, therefore, that an injunction should be denied in this case, where the patentee is demanding his side of the bargain and giving nothing in return,<sup>8</sup> unless, perhaps, he agrees to use the patent himself or to allow it to be used by others on payment of a reasonable license fee.

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RIGHTS OF A LIFE TENANT WHO BUYS IN MORTGAGED PROPERTY. — It seems impossible to say that the relation between life tenant and remainderman is that of trustee and *cestui*,<sup>1</sup> or is of a fiduciary nature at all.<sup>2</sup> There is no privity between them, for a title gained by adverse possession during the existence of the life tenancy will not be valid against the remainderman.<sup>3</sup> The life tenant, moreover, unlike a trustee, may buy in the interest of the remainderman without disclosing all he knows.<sup>4</sup> To be sure, he owes certain duties, such as the duty not to commit waste; and an incumbrance bought in will enure to the benefit of the remainderman.<sup>5</sup> But these well-established results do not arise, as many courts have loosely said, from a

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<sup>4</sup> See *Kendall v. Winsor*, 21 How. (U. S.) 322, 328. See also *Robinson, Patents*, 4 ed., § 43.

<sup>5</sup> 2 Edw. 7, c. 34, § 3. See *Terrell, Patents*, 4 ed., 248.

<sup>6</sup> See *Heaton-Peninsular, etc., Co. v. Eureka Specialty Co.*, 77 Fed. Rep. 288, 294; *Bement v. Nat'l Harrow Co.*, 186 U. S. 70, 91.

<sup>7</sup> *Mansfield v. Sherman*, 81 Me. 365. See 16 HARV. L. REV. 444.

<sup>8</sup> See *N. Y. Paper Bag, etc., Co. v. Hollingsworth, etc., Co.*, 56 Fed. Rep. 224, 231. But see *Fuller v. Berger*, 120 Fed. Rep. 274, 278. Cf. *Brown Saddle Co. v. Troxel*, 98 Fed. Rep. 620; *Nat'l Folding Box, etc., Co. v. Robertson*, 99 Fed. Rep. 985.

<sup>1</sup> See 11 HARV. L. REV. 333.

<sup>2</sup> *Dicconson v. Talbot*, L. R. 6 Ch. 32; *Fidelity, etc., Deposit Co. v. Dietz*, 132 Pa. St. 36.

<sup>3</sup> *Higgins v. Crosby*, 40 Ill. 260.

<sup>4</sup> See *Anderson v. Lemon*, 8 N. Y. 236, 237.

<sup>5</sup> See *Whitney v. Salter*, 36 Minn. 103; *Myers v. Reed*, 17 Fed. Rep. 401, 407.

fiduciary relation between the parties. Such reasoning has led in some situations to unsupportable conclusions, of which a recent English case is an example. There it was decided that the husband of a life tenant of property subject to a mortgage, who bought it in at foreclosure, held it for the benefit of the remainderman. *Griffith v. Owen*, [1907] 1 Ch. 195.

The court seeks support for its decision in those cases where a trustee of a lease is not permitted to renew it for his own benefit, even though the lessor has refused to renew for the *cestui que trust*.<sup>6</sup> Analogous with these are the cases where a partner who renews a partnership lease for himself is made to hold for the benefit of his co-partner.<sup>7</sup> The principle of such cases, resting upon grounds of public policy,<sup>8</sup> is merely an application of the rule restricting the power of the trustee to deal with the trust *res*. But if the relation between life tenant and remainderman is not fiduciary, such authorities are not here in point. There is also an argument from those cases where a renewal by a life tenant of a lease with power of renewal is held to enure to the benefit of those in remainder.<sup>9</sup> But there the reason is not that there is a fiduciary relation between the parties, nor has such an explanation been generally given in the cases. The new lease is regarded merely as a graft upon the old, and the remainderman takes according to the original settlement.<sup>10</sup> Neither line of reasoning adopted by the court can sustain the conclusion of the case. The doctrine does, however, find considerable support in this country.<sup>11</sup>

Though it is hard to see why the life tenant should not ordinarily have the right to buy in the property at foreclosure and to hold it upon the same terms as any one else, yet if there is any fraud the situation is different. If the scheme is merely colorable to cut out those owning subsequent estates, the life tenant of course holds in trust. Many of the cases, and possibly the present case, might be explained on this ground. The trust does not arise, however, because of any fiduciary relation between the parties, but is an ordinary constructive trust raised because of the fraud. Permitting the land to be sold for taxes and then buying it in at the sale, is another example of the same practice, and the life tenant very properly is not permitted to cut out the remainderman in this way.<sup>12</sup> In short, the life tenant should not, through the power which his possession gives him, be permitted to gain any secret advantage over the remainderman.<sup>13</sup> This, it is believed, is as far as the remainderman can legitimately be protected.

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EQUITABLE RELIEF FROM FORFEITURE OF A LEASE INCURRED BY BREACH OF COVENANT. — Equitable relief is often given from the forfeiture otherwise resulting from the breach of covenants in leases. It will be convenient first to consider the general situations where there has been neither accident, mistake, fraud, nor surprise. To summarize broadly the holdings of the

<sup>6</sup> *Keech v. Sandford*, 2 Eq. Cas. Abr. 741.

<sup>7</sup> *Featherstonhaugh v. Fenwick*, 17 Ves. Jr. 298.

<sup>8</sup> See *Blewett v. Millett*, 7 Bro. P. C. 367, 373.

<sup>9</sup> *Rawe v. Chichester*, Ambl. 715.

<sup>10</sup> *Taster v. Marriott*, Ambl. 668.

<sup>11</sup> *Bowen v. Brogan*, 119 Mich. 218; *Keller v. Fenske*, 123 Wis. 435. See *Cockrill v. Hutchinson*, 135 Mo. 67. *Contra*, *Fidelity, etc., Deposit Co. v. Dietz*, *supra*. *Cf.* *Rector of Christ Church v. Mack*, 93 N. Y. 488.

<sup>12</sup> *Varney v. Stevens*, 22 Me. 331.

<sup>13</sup> See *Nesbit v. Tredennick*, 1 Ball & B. 29, 46.